

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WALTER McCOY,

Defendant.

ORDER

08-cr-53-bbc

In an order entered on February 24, 2012, I denied defendant Walter McCoy's motion under 18 U.S.C. § 3582. On September 6, 2012, defendant filed an untimely motion for reconsideration which was denied on September 11, 2012. Now defendant has filed a notice of appeal. His notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not

taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel, so he can proceed in forma pauperis on appeal unless I find that his appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. As I explained in the February 24 and September 11, 2012 orders because defendant was sentenced as a career offender as defined in U.S.S.G. § 4B1.1(a), the amendment to the guidelines does not apply to him. Therefore, I must deny defendant’s request to proceed in forma pauperis on appeal.

Pursuant to Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court’s denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant Walter McCoy’s request for leave to proceed in forma pauperis on appeal from this court’s orders of February 24 and September 11, 2012, is DENIED.

I certify that defendant's appeal is not taken in good faith. Defendant has the right to appeal this order certifying his appeal as not taken in good faith.

Entered this 1st day of October, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge